

Appl. No : 09/692,655  
Filed : October 19, 2000

REMARKS

With this Amendment, Claims 8-22, 26-31 and 37-59 are pending in the present application, Claims 16, 17 and 37 have been withdrawn, Claims 8, 10-12, 14, 15, 20, 22, 38, 39 and 43-45 are amended, and new Claims 49-59 are added. Claims 1-7 and 32-34 have been cancelled without prejudice. Applicant reserves the right to pursue the subject matter of the cancelled claims in subsequent continuing applications.

Restriction Requirement Response

A Restriction Requirement was mailed on August 21, 2003. Applicant's representatives filed a response to the Requirement on September 18, 2003 (i.e. within the shortened statutory period for reply). In a telephone conversation with Examiner Canfield on December 2, 2003, the undersigned learned that the Patent and Trademark Office had no record of having received Applicant's Response to the Restriction Requirement.

The undersigned hereby attests on the basis of the evidence provided herewith that a Response to the Restriction Requirement in the above-identified patent application was timely filed with a Certificate of Mailing in accordance with 37 C.F.R. § 1.8(a) bearing the date of September 18, 2003.

A copy of the Response filed on September 18, 2003 is attached hereto. Also provided herewith is a copy of the transmittal letter bearing the certification in accordance with 37 C.F.R. § 1.8(a) certifying that the Response to Restriction Requirement in one page and a postcard were mailed to the Patent and Trademark Office on September 17, 2003. A copy of the postcard stamped as being received by the PTO on September 22 is also included herewith.

Applicant therefore respectfully requests that the Restriction Requirement Response be entered into the record of the above-identified application and that it be accorded the filing date of September 18, 2003. In view of the timely filing of the response as evidenced above, Applicant believes that no extension fees are due. If any further issues remain, the Examiner is respectfully requested to call Applicant's representative at the number indicated below.

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The Claims are Patentable Over McCorsley et al.

As discussed during the personal interview on 10/29/2003, and as indicated in the Examiner's Interview Summary, McCorsley et al. (US 6,487,826) teaches a ventilation system which provides passages from the interior of an attic area to the exterior of a building. One component of the system described in McCorsley is a plug (10), which is described as being made of an air-impermeable three-dimensional matrix of thermoplastic micro-filaments irregularly looped and intermingled in a highly porous or open, three-dimensional sheet structure. The plug (10) of McCorsley is placed between a roof decking (40) and the shingles 34. As shown in Figure 1-3, and as described at Column 3, lines 40-60, the plug 10 is positioned at a lower end of the roof adjacent the gutter (37) and fascia board (36) so as to allow air to flow through the opening (38) between the shingles (34) and the gutter (37) and into the attic via the slot (44). Applicant respectfully submits that the teachings of McCorsley do not fairly suggest Applicant's invention, at least because the structure described therein is intended to solve a very different problem which is entirely unrelated to the problem of tile breakage addressed by Applicant's invention.

Declaration To Present Evidence of Non-Obviousness Under 37 C.F.R. § 1.132

The attached "Declaration of Evidence of Non-Obviousness" is presented under 37 C.F.R. § 1.132. The declaration is written and signed by a person having skill in the art of roof construction as laid out in the first two paragraphs. The declarant states that he is familiar with the prior art, and that Applicant's invention is unique and innovative in view of the failures of others to provide a viable solution to the problem of tile breakage.

Applicant respectfully submits that the declaration supports Applicant's assertions that the present invention would not have been obvious to a person having ordinary skill in the art at the time the invention was made and in view of the prior art of record. Therefore, for this reason also, Applicant respectfully submits that the claims as presented above are in condition for allowance.

New Claims

New Claims 49-57, have been added as suggested by Examiner Canfield during the personal interview of October 29, 2003. If the Examiner would like to suggest any further

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**Filed** : October 19, 2000

amendments, Applicant respectfully invites the Examiner to call Applicant's representative at the number indicated below.

Allowable Subject Matter

In the Office Action mailed on January 31, 2003, the Examiner indicated that Claim 26 would be allowable if re-written in independent form. Thus, Applicant respectfully submits that Claim 26 presented above is in condition for allowance.

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CONCLUSION

Applicant respectfully traverses each of the Examiner's rejections and each of the Examiner's assertions regarding what the prior art shows or teaches. Although amendments have been made, no acquiescence or estoppel is or should be implied thereby. Rather, the amendments are made only to expedite prosecution of the present application, and without prejudice to presentation or assertion, in the future, of claims on the subject matter affected thereby. Any arguments in support of patentability and based on a portion of a claim should not be taken as founding patentability solely on the portion in question; rather, it is the combination of all of the features or acts recited in a claim which distinguishes it over the prior art. Additionally, any argument made in support of the patentability of a single claim is intended to refer only to the claim addressed in the argument, and should not be read as influencing the interpretation of any other claims or claim limitations.

The undersigned has made a good faith effort to respond to all of the rejections and objections in the present application and to place the claims into condition for allowance. Nevertheless, if any issues remain which can be resolved by telephone, the Examiner is respectfully requested to call Applicant's representative at the number indicated below in order to resolve such issues promptly.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: 12/19/03

By: Lang J. McHardy  
Lang J. McHardy  
Registration No. 50,591  
Agent of Record  
Customer No. 20,995  
Phone: (805) 547-5580

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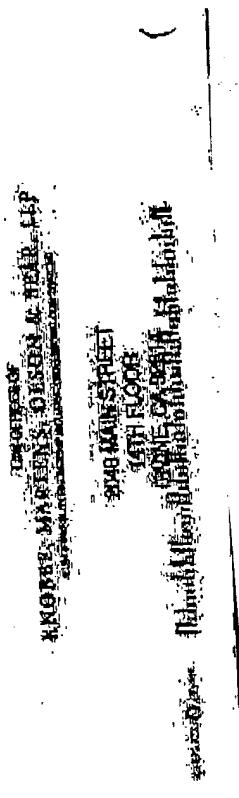
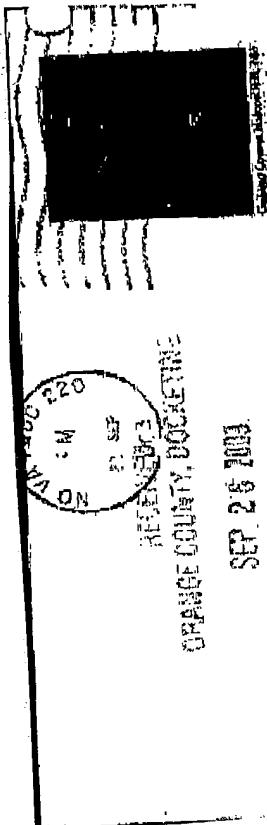
ORANGE COUNTY, CALIFORNIA

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[Eastern Daylight Time]\* SVR:USPTO-EFXRF-1/1 \* DNIS:8729306 \* CSID:180554

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UTILITY DESIGN PATENT (continued from Appeal)		Date 17 Sept 2003
Rec'd in the USPTO on the date of filing. Date of Action: 3-31-03		
Docket # 15-SALIN-OD-21		Transferred from via Certificate of Mail
Title: ROSE FILE SUPPORT BRACKET		Applicant: G. Smith
App No.: 10/652,425		
VERIFIED BY: Atty: U. S. Patent & Trademark Office		Filing Date: 10/16/03 QC: 1/7
		Atty: USA 10/16/03 QC: 1/7
<input checked="" type="checkbox"/> Terminal Listing <input type="checkbox"/> Amended <u>PPS</u> <input type="checkbox"/> Month Extension Requested <input type="checkbox"/> Information Disclosure Statement with <u>PPQ-1449 w/ Ref#</u> <input type="checkbox"/> Terminal Disclaimer in <u>PPS</u> <input type="checkbox"/> Sequence Submission Statement <input type="checkbox"/> Sequence Listing in <u>PPS</u> <input type="checkbox"/> copies of CRF Containing Seq List <input type="checkbox"/> Return Prepaid Postcard		
(Signature)		

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Docket No.: GSMLTH.002A

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Customer No.: 20,995

**AMENDMENT / RESPONSE TRANSMITTAL**

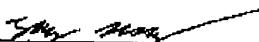
Applicant : Smith, G.  
 App. No. : 09/692,655  
 Filed : October 19, 2000  
 For : ROOF TILE SUPPORT  
 Examiner : Thissell, J.  
 Art Unit : 3635

**CERTIFICATE OF MAILING**

I hereby certify that this correspondence and all marked attachments are being deposited with the United States Postal Service as first-class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on

September 18, 2003

(Date)

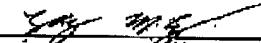
  
Lang J. McHardy, Reg. No. 50,591

Commissioner for Patents  
 P.O. Box 1450  
 Alexandria, VA 22313-1450

Sir:

Transmitted herewith for filing in the above-identified application are the following enclosures:

- Response to Restriction Requirement in 1 page.
- The present application qualifies for small entity status under 37 C.F.R. § 1.27.
- Return prepaid postcard.
- Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

  
 Lang J. McHardy  
 Registration No. 50,591  
 Agent of Record  
 Customer No. 20,995  
 (805) 547-5580

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PATENT

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant	:	Smith, G.	Group Art Unit 3635
Appl. No.	:	09/692,655	
Filed	:	October 19, 2000	
For	:	ROOF TILE SUPPORT	
Examiner	:	Thissell, J.	

RESPONSE TO RESTRICTION REQUIREMENT

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

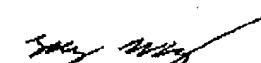
In response to the Restriction Requirement dated August 21, 2003, Applicant hereby elects Group I without traverse. Group I has been identified by the Examiner as including Claims 1, 2, 4, 6, 8-15, 18-22, 26-34 and 38-48.

If any issues remain which can be resolved by telephone, the Examiner is invited to call Applicant's representative at the number below in order to resolve such issues promptly.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: 9/16/03

By: 

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PAGE 19/24 \* RCVD AT 5/28/2004 6:27:47 PM [Eastern Daylight Time] \* SVR:USPTO-EFXRF-1/1 \* DNI:8729306 \* CSID:18055475590 \* DURATION (mm:ss):06:30

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**PATENT****IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant	:	Smith, G.	Group Aa Unit 3635
Appl. No.	:	09/692,655	
Filed	:	October 19, 2000	
For	:	ROOF TILE SUPPORT	
Examiner	:	Thisell, J.	

**DECLARATION OF EVIDENCE OF NON-OBFVIOUSNESS**

United States Patent and Trademark Office  
P.O. Box 2327  
Arlington, VA 22202

The purpose of this declaration is to present facts establishing the non-obviousness of the invention claimed in the above-identified application. The person making this declaration is Steve Rhorer, past Pres. and owner of A.L.L. Roofing Materials of Long Beach and Santa Ana Inc.

Relevant and professional background is 30 plus years of experience in Roofing Distribution in So. California representing all the major roofing products manufactured today including asphalt composition shingles, clay and concrete tiles, shakes and shingles, fibrous cement products, natural slate, metal roofing, built up roofing with hot asphalt, modified and torch down systems, etc.

**The Problem of Roof Tile Breakage**

It is well known that Concrete and Clay tile make up a large portion of the roofing materials offered. Many contractors, because of their long life and aesthetic appeal, have long used them. However, one of the major disadvantages has been the problem of breakage. Most traditional tiles are manufactured to be installed in such a way that each tile leaves an unsupported gap under each tile. Due to the lack of tile support created by this gap, the tile is likely to break in that area during foot traffic.

### Failed Efforts of Others

A variety of attempts over the years have been made to remedy this tile breakage problem. An obvious solution is to make the tile stronger by using more concrete or clay to make it thicker. This makes a stronger tile but results in heavier tile, which translates into increased structural and framing costs to the building owner. Another is to use different materials in the tile to increase strength without increasing weight. This has proven to be only marginally effective and extremely cost prohibitive. Another method has been to position posts on the underside of the tile during manufacturing. Again the idea was sound, but in field application it failed miserably. Uneven roof decks (which occur on virtually every job) would cause that the posts were off the deck, or raised the tile causing aesthetic and installation problems. In addition, the posts did not allow for the necessary course adjustments by the installer as he attempts to create an even pattern around roof obstructions, penetrations, jogs, and elevation changes.

As mentioned earlier, the long proven design and method of manufacturing tile is time tested. To vary from this traditional tile design means giving up time tested applications designed to keep the water out. It would also require costly investment of capital by the manufacturer to redesign their molds to create each tile design. However, these time-tested tiles have one disadvantage, a gap under each tile, which increases breakage.

### Review of Prior Art

Kelly: I am familiar with this invention. As it states in the Abstract, "...for creating a sloping roof out of a flat roof and also of providing said sloping roof with slopes which merge into plateaus." This is absolutely true. What it deals with is sloping the roof deck to create drainage. Once the slope is created on the roof deck the actual roofing material is installed over said deck. If tile is now placed on said sloped roof deck we still have the same problem of unsupported gaps under the tile. This Kelly invention is specific and limited to only roof sloping; it has absolutely nothing to do with addressing the problem of broken tile.

Fifield: This is a clever work of art, but I am not aware of any such material on the market. This invention is very specific and limited to just one type of tile, which would have to be manufactured specifically. This wedge support is laminated to the surface on each piece. The results may solve breakage on this particular tile but this cannot be used with the thousands of other tile that exist in the current market place. Having seen this would not make it obvious to invent something else. It in no way resolves the problem of reduction of breakage on the dozens of current time tested tiles, which exist on the market today. It also fails to accommodate uneven roof decks and course adjustment in the field application, which is a major necessity in field application. Furthermore, I am not aware of any such product on the market.

Ilnyckyj: this invention is again an attempt to make a specific tile and then attach, and support it in a limited and specific way. It does not address the problem of breakage on the dozens of current and time-tested tiles.

**McCorsley:** This is a great design for the specific use of Ventilation. Again it says nothing of a remedy for tile breakage.

**Feil:** This is another very specific and limited system. Sub roof and insulation, nothing to do with supporting tiles that are currently on the market.

Upon reviewing these prior inventions I, cannot see how these inventions could have been used with any relevance to the invention of the ROOF TILE SUPPORT of Gary Smith. As discussed, many attempts to remedy the problem have been made unsuccessfully. One who is in the roofing industry such as Mr. Smith has seen all of these attempts come and go. If one would have studied the above mentioned inventions, it may be concluded that two of them (Fifield, Ilnyckyj) could be produced as stand alone systems and possibly they could work. However, as mentioned, it does not address solving the problem of supporting the time tested economical tile now on the market.

**Applicant's Invention Provides A Unique, Practical, and Economical Solution.**

Many attempts have been made to solve this problem of tile breakage. All have resulted in failure. The uniqueness of Mr. Smith's invention is that it is viable. It is innovative in that the simplest solution is the best. Mr. Smith is a roofer, which gave him the advantage of coming up with an idea and then using it in a practical and economical way. He knew that it must meet a rigorous test in the market place, to be economical, practical, and viable.

This product is unique in that it meets a scope of extremely vital benefits, which must be met in order for it to be used in the market place. These benefits are as follows:

- it actually works and supports the tiles and reduces breakage
- it works under a variety of the existing tiles on the market, which are time tested
- when installed it does not impair the integrity of the said tiles
- it allows for field adjustments which are absolutely necessary
- it is extremely economical and easy to produce rapidly
- it is easily installed with very little added cost

In order for a product to meet the entire scrutiny of the marketplace it must meet all of these. In addition, this product is out in the market place and it is working very well. There is nothing like it.

I, Steve Rhorer hereby declare that all of the foregoing is true and accurate to the best of my knowledge.

Dated: 10/30/2003

Signature:

Steve Rhorer

